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No. 80-2204

In the Supreme Court of the United States

October Term, 1981

VICTOR P. DIEDRICH and FRANCES T. DIEDRICH,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

and

UNITED MISSOURI BANK OF KANSAS CITY, N.A., EXECUTOR OF THE ESTATE OF FRANCES D. GRANT, DECEASED, *Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

NORMAN E. BEAL
HILLIX, BREWER, HOFFHAUS & WHITTAKER
2715 Commerce Tower
P. O. Box 13367
Kansas City, Missouri 64199
(816) 221-0355
Counsel for Petitioners

REX E. LEE
Solicitor General of the United States
U. S. Department of Justice
Washington, D. C. 20530
(202) 633-2217
Counsel for Respondent

Petition for Certiorari Filed June 25, 1981
Certiorari Granted October 5, 1981

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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GENERAL DOCKET

UNITED STATES TAX COURT

Docket No. 5757-77

FRANCES D. GRANT, 824 BMA Tower, One Penn Valley, Kansas City, Missouri 64141,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

June 9, 1977	PETITION FILED: FEE PAID June 9, 1977.
June 9, 1977	REQUEST by Petr. for trial at Kansas City, Missouri.
June 17, 1977	ENTRY OF APPEARANCE by Norman E. Beal as counsel for petr. filed.
Jul. 1, 1977	ENTRY OF APPEARANCE by Oscar S. Brewer as counsel for petr. filed.
Jul. 21, 1977	ANSWER by Resp. filed.
Sep. 22, 1977	MOTION by Petr. for Judgment on the Pleadings. (C/S 9/19/77)
Sep. 22, 1977	BRIEF in Support of Motion for Judgment on the Pleadings filed by Petr. (C/S 9/19/77)
Sept. 23, 1977	NOTICE of hearing Nov. 9, 1977 at Washington, DC on Petr. motion filed Sept. 22, 1977.
Nov. 4, 1977	NOTICE OF OBJECTION by Resp. to Petr's. Motion for Judgment on the Pleadings, filed.

Nov. 4, 1977	MOTION by Resp. for leave to file a Motion for entry of order that undenied allegations in Answer be deemed admitted out of time. (Motion under Rule 37(c) Lodged)
Nov. 4, 1977	MOTION by Resp. for continuance of hearing on Petr's. Motion filed Sept. 22, 1977 to Jan. 4, 1978 at Washington, D.C.
Nov. 7, 1977	ORDER that resp. motion for continuance filed Nov. 4, 1977 is granted in that the hearings on petr's. pending motion for judgment on the pleadings is continued to the Motions Session on Jan. 11, 1978 at Washington, D.C. It is further
	ORDER that resp's. motion for leave to file Rule 37 Motion out of time filed Nov. 4, 1977 is also calendared for hearing on Jan. 11, 1978 Motions Session at Washington, D.C.
Dec. 5, 1977	REPLY by Petitioner filed. (Leave to file Granted)
Dec. 22, 1977	AMENDMENT TO NOTICE OF OBJECTION to petr's. motion for judgment on the pleadings filed by resp.
Dec. 22, 1977	MEMORANDUM OF LAW filed by resp.
Jan. 10, 1978	SUPPLEMENTAL STATEMENT filed by petr. in support of petr's. motion for judgment on the pleadings. (C/S 1-6-78)
Jan. 11, 1978	HEARING at Washington, DC before Special Trial Judge Cantrel. Petr. motion filed 9/22/77. See Order 2-28-80.

Jan. 13, 1978	TRANSCRIPT of Jan. 11, 1978 received.
Feb. 27, 1980	ORDER that case is *reassigned to Judge Dawson.*
Feb. 27, 1980	MEMORANDUM OPINION Filed, Judge Dawson. An appropriate order and decision will be entered.
Feb. 28, 1980	ORDER that petr's. motion filed Sep. 22, 1977 is granted. It is further
	DECISION ENTERED, Judge Dawson.
	APPELLATE PROCEEDINGS
May 27, 1980	NOTICE OF APPEAL to U.S.C.A., Eighth Circuit, filed by Respondent.
May 28, 1980	NOTICE of Filing with copy of notice of appeal mailed to Mr. Albert F. Hillix, counsel for petitioner.
May 28, 1980	NOTICE, to parties, of assembling and date for transmission of the record.

(Caption Omitted)

PETITION (Docket No. 5757-77)

(Filed June 9, 1977)

Petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his Notice of Deficiency, I.R.S. Symbol No. RC:MW:DIR:STL: jh(kcy), dated March 10, 1977 and, as the basis for her case, alleges as follows:

1. Petitioner is an individual with legal residence in Kansas City, Jackson County, Missouri. The return for the period here involved was filed with the Office of the Internal Revenue at Kansas City, Missouri.

2. The Notice of Deficiency (a copy of which, including so much of the statement and schedule accompanying the notice as is material, is attached and marked Exhibit A) was mailed to the petitioner on March 10, 1977, and was issued by the Office of the Internal Revenue Service at P. O. Drawer 1458, Central Station, St. Louis, Missouri 63188.

3. The deficiencies determined by the Commissioner are in income taxes for calendar years 1970 and 1971, in the amounts of $41,908 and $50,237 respectively, all of which is in dispute.

4. The determination of tax set forth in said Notice of Deficiency is based upon the following errors:

(a) that petitioner's net gifts of securities to her son in 1970 and 1971 constituted in part gifts and in part sales, with the result that petitioner realized capital gain to the extent the gift taxes assumed and paid by the donee exceeded her basis in the securities;

(b) that the capital gain, if any, realized by petitioner upon the net gift of securities to her son in 1970 was recognized by her in 1970 upon the making of said gift, rather than in 1971 upon payment of the gift taxes by the donee;

(c) that the deficiency, if any, for the petitioner's tax year ending December 31, 1970, was not barred by the applicable statute of limitations;

(d) that the Commissioner is not estopped to assert the part-gift, part-sale theory mentioned in (a) above because of petitioner's reliance upon the previous case law and the Regulations and Rulings of the Commissioner concerning net gifts;

(e) that the amount of the gift tax liability assumed and paid by petitioner's son, the donee, for petitioner's net gift in 1970 was $148,753.55 when in fact said amount was $106,334.32; and

(f) that the amount of the gift tax liability assumed and paid by petitioner's son, the donee, for petitioner's net gift in 1971 was $166,914.03 when in fact said amount was $126,295.77.

5. The facts upon which petitioner relies as the basis of her case are as follows:

(a) Petitioner is over 90 years old and has for many years made sizeable gifts to her children. No part of these gifts was ever intended as a sale.

(b) On August 19, 1970, petitioner made a gift of 50,000 Class "A" Voting Trust Certificates, representing common stock of BMA Corporation, to her son William D. Grant. This was a net gift conditioned upon the donee paying the gift tax shown to be due by petitioner's gift tax return. On or before April 15, 1971, petitioner filed her gift tax return for 1970, reporting the aforesaid net gift, and the donee paid, upon the filing of said return, the gift taxes disclosed to be owing for said net gift in the amount of $106,334.32. The petitioner's adjusted basis in these Voting Trust Certificates was $4,857.00.

(c) On or before April 15, 1971, and within the time required by law, petitioner filed her United States Individual Income Tax Return for the year 1970 and paid with or prior to filing such return the full amount of taxes shown to be owing, to wit: $27,754.00.

(d) On January 11, 1971, petitioner made a gift of 40,000 Class "A" Voting Trust Certificates, represent-

ing common stock of BMA Corporation, to her son William D. Grant. This was a net gift conditioned upon the donee paying the gift tax shown to be due by petitioner's gift tax return. On May 20, 1971, petitioner filed her gift tax return for the first quarter of 1971 reporting the aforesaid net gift and the donee paid, upon the filing of said return the gift taxes disclosed to be owing for said net gift in the amount of $126,295.77. The petitioner's adjusted basis in these Voting Trust Certificates was $3,885.60.

(e) On or before April 15, 1972, and within the time required by law, petitioner filed her United States Individual Income Tax Return for the year 1971 and paid with or prior to filing such return the full amount of taxes shown to be owing, to wit: $7,035.00.

(f) Upon audit of petitioner's income tax returns for 1970 and 1971, the Commissioner determined that petitioner's gifts to her son, as described above, constituted in part a sale of the property to him. On the basis of such determination, the Commisisoner proposed deficiencies in petitioner's 1970 and 1971 income taxes in the respective amounts of $41,908.00 and $50,237.00, plus interest on said deficiencies through March 15, 1977 in the respective amounts of $16,065.00 and $16,243.83.

(g) Petitioner intended all of the Voting Trust Certificates transferred by her to her son on August 19, 1970, and on January 11, 1971, to be net gifts to him; neither of said transfers, in whole or in part, was intended as a sale of the Voting Trust Certificates to petitioner's son. The petitioner's income tax returns, as filed, for the years 1970 and 1971 correctly reported her income.

(h) The due date of the 1970 federal income tax return of petitioner was April 15, 1971. Said return was filed prior to that date. Petitioner has not given any waivers staying the running of the applicable statute of limitations with regard to the 1970 return. The Notice of Deficiency is dated March 10, 1977.

WHEREFORE, Petitioner prays that this Court may hear this proceeding and determine that no deficiency exists as to her for the taxable years 1970 and 1971, and that petitioner should recover her costs and attorneys' fees in this action.

By /s/ Albert F. Hillix
By /s/ Oscar S. Brewer
By /s/ Norman E. Beal
Hillix, Brewer, Hoffhaus & Whittaker
2715 Commerce Tower
P. O. Box 13367
Kansas City, Missouri 64199
(816) 221-0355
Attorneys for Petitioner

Dated: June 7, 1977

Exhibit A

Internal Revenue Service
District Director
RC:CW:DIR:STL:jh(kcy)
Certified Mail #510128

Date: MAR 10 1977

Internal Revenue Service
P. O. Drawer 1450
Central Station
St. Louis, Missouri 63188

MAR 11 1977 U. S.
Department of the Treasury

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Tax Year Ended and Deficiency:
12/31/70 $41,908.00
~~Person to Contact:~~
12/31/71 50,237.00
~~Contact Telephone Number:~~
Person to Contact:
K. Francis
Contact Telephone Number:
1-800-392-4200 (toll free)

Frances D. Grant
824 RMA Tower, One Penn Valley
Kansas City, Missouri 64141

This letter is a NOTICE OF DEFICIENCY—as required by law—that we have determined the income tax deficiencies shown above. We regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You can obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address stated above.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

William E. Williams
~~Maxxxxxxxxxxxxxx~~
Commissioner
By R.C. Voskuil

Enclosures:
Statement
Waiver
Envelope

Form 4089 (Rev. November 1974)	Department of the Treasury - Internal Revenue Service Statutory Notice Statement - Waiver	Symbols RC:MW:DIR:STL:jh(key)

Name and Address of Taxpayer(s)

- 10 -

Frances D. Grant
824 EMA Tower, One Penn Valley
Kansas City, MO 64141

Kind of Tax	☒ Copy to Authorized Representative	Thomas L. McKittrick P.O. Box 13406 Kansas City, MO 64199
Income		
Taxable Year Ended	Deficiency (Increase in Tax and Penalties)	
12/31/70	$41,908.00	
12/31/71	50,237.00	

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Spouse			
	▶		Date
	▶		Date
	By ▶	Title	Date

Note:

If you consent to the assessment of the amounts shown in this waiver, please sign and return the form in order to limit the accrual of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are so entitled; nor prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for other action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Court of Claims, but you may not file a petition with the United States Tax Court.

Who Must Sign

If you filed jointly, both you and your spouse must sign. If the taxpayer is a corporation this waiver must be signed with the corporate name followed by the signatures and titles of the officers authorized to sign.

Your attorney or agent may sign this waiver provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, an executor, administrator, or a trustee), Form 56, Notice of Fiduciary Relationship, should, unless previously filed, accompany this form.

If you agree, please sign one copy and return it; keep the other copy for your records.

Form 9459
January 1975

Statement - Income Tax Changes

2010 | A

Name of Taxpayer(s)

Frances D. Grant - 11 -

☒ Notice Deficiency ☐ Other (specify)
☐ Settlement Computation

	Tax Years Ended 12-31-70	12-31-71	
1. Adjustments to income			
a. Gain from Disposition of Capital Asset	$71,948.00	$81,514.00	
b. Medical Expense Deduction		2,445.00	
c. Sales Tax Deduction	(45.00)	(62.00)	
d.			
e.			
f.			
g.			
2. Total adjustments	71,903.00	83,897.00	
3a. ☒ Taxable income ☐ Adjusted gross income b. As shown in: ☐ Preliminary letter dated _____ ☐ Notice of deficiency dated _____ ☒ Return as filed	58,410.00	24,612.00	
4. ☐ Taxable income as revised ☐ Adjusted gross income as revised	130,313.00	108,509.00	
5. Tax			
6. Alternative tax if applicable (from page 2)	67,975.00	57,272.00	
7. Tax surcharge	1,699.00		
8. Corrected tax liability (Lesser of line 5 or 6, plus line 7)	69,674.00	57,272.00	
9. Less credits (specify) a. Retirement Income Credit	12.00		
b.			
c.			
10. Balance (line 8 less amounts on lines 9a through 9c)	69,662.00	57,272.00	
11. Plus a. Tax from recomputation prior year investment credit			
b. Self-employment tax			
c.			
12. Total corrected income tax liability (line 10 plus amounts on lines 11a through 11c)	69,662.00	57,272.00	
13. Total tax shown on return or as previously adjusted	27,754.00	7,035.00	
14. Statutory deficiency or overassessment (difference between lines 12 and 13)	41,908.00	50,237.00	

15. Additions to the tax (listed below)

Form 5278 (1-75)

Form 4512 C (Dec. 1969)

INCOME TAX AUDIT MANUAL

COMPUTATION OF ALTERNATIVE TAX — NONCORPORATE TAXPAYERS

NAMES OF TAXPAYERS

Frances D. Grant - 12 -

SOCIAL SECURITY NUMBER

487-30-6247

		Year: 12-31-70	12-31-71
PART I Complete for all years	1. CORRECTED TAXABLE INCOME (from line 4, page 13)	130,313.00	108,309.00
	2. LESS: 50% OF EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS	71,948.00	81,314.00
	3. BALANCE	58,365.00	26,995.00
	4. EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS (line 2 multiplied by 2)	143,896.00	163,028.00
	5. TAX ON AMOUNT ON LINE 3	27,776.00	8,038.00
	6. a. FOR 1969 AND PRIOR YEARS — 25% OF LINE 4 b. FOR 1970 AND SUBSEQUENT YEARS, IF LINE 4 NOT OVER $50,000* — 25% OF LINE 4 c. FOR 1970 AND SUBSEQUENT YEARS, IF LINE 4 EXCEEDS $50,000* — AMOUNT FROM LINE 18 FOR 1970 AND 1971 AND AMOUNT FROM LINE 14 FOR LATER YEARS	40,199.00	49,234.00
	7. ALTERNATIVE TAX (add lines 5 and 6)	67,975.00	57,272.00
PART II Complete only for 1970 and subsequent years when line 4 above exceeds $50,000* (for 1970 and 1971, also complete Part III)	8. AMOUNT FROM LINE 4 ABOVE	143,896.00	163,028.00
	9. LONG-TERM CAPITAL GAINS (section 1201(d)(3))**	50,000.00	50,000.00
	10. 25% OF THE LESSER OF LINE 8 OR LINE 9	12,500.00	12,500.00
	11. TAX ON LARGER OF LINE 1 OR LINE 3	76,709.00	59,046.00
	12. TAX AT ORDINARY RATE ON SUM OF LINE 3 PLUS ½ OF LINE 9	44,078.00	21,427.00
	13. LINE 11 LESS LINE 12 (if less than zero, enter zero)	32,631.00	37,619.00
	14. ADD LINES 10 AND 13 (see line 14 below)	45,131.00	50,119.00
PART III Complete for years 1970 and 1971 if line 4 above exceeds $50,000*	15. a. FOR 1970 — 29½% OF LINE 8 LESS LINE 9 b. FOR 1971 — 32½% OF LINE 8 LESS LINE 9 (if less than zero, enter zero)	27,699.00	36,734.00
	16. AMOUNT FROM LINE 10 ABOVE	12,500.00	12,500.00
	17. ADD LINES 15 AND 16	40,199.00	49,234.00
	18. LESSER OF AMOUNTS ON LINES 14 OR 17 (enter on line 6(c) above)	40,199.00	49,234.00

* $25,000 if married filing separately.

** Long-term capital gains from (1) certain binding contracts, distributions and installment sales, and (2) more generous [illegible] of $50,000 ($25,000 married filing separately) over the gains from the binding contracts, etc.

Form 4512 C (12-70)

FORM 886-A FEBRUARY 1969	EXPLANATION OF ITEMS	FOLIO 3
NAME OF TAXPAYER Frances D. Grant	- 13 -	YEAR ENDED 12-31-70 12-31-71

(a) It is determined that you realized a long term capital gain from the disposition of Business Men's Assurance Company's stock in the amount that the gift tax assumed by the donee exceeded your adjusted basis in the donated property. The gain is taxable income subject to the 50 per cent deduction provided by section 1202 of the Internal Revenue Code. (See computation below.)

1970	
Gift tax liability assumed on 50,000 shares of BMA stock transferred in August 1970	$148,753.55
Adjusted basis in the stock	4,857.00
Net Long Term Capital Gain	$143,896.55
Section 1202 Deduction	71,948.28
Net Gain, as corrected	$71,948.27
1971	
Gift tax liability assumed on 40,000 shares of BMA stock transferred in January 1971	$166,914.03
Adjusted basis in the stock	3,885.60
Net Long Term Capital Gain	$163,028.43
Section 1202 Deduction	81,514.22
Net Gain, as corrected	$81,514.21

(b) It is determined that, due to the increase in the amount of your adjusted gross income, a medical expense deduction of $8,260.00 is allowed in lieu of $10,705.00 claimed on your income tax return; therefore, your taxable income is increased in the amount of $2,445.00. (See attached schedule on Form 4109 for the computation.)

FORM 886-A FEBRUARY 1969	EXPLANATION OF ITEMS	SHEET 4
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Frances D. Grant	- 14 -	12-31-70 12-31-71

(c) Due to the increase in your adjusted gross income in 1970 and 1971, a sales tax deduction of $311.00 for 1970 and 1971 is allowable in lieu of $266.00 claimed in 1970 and $249.00 claimed in 1971. Therefore, your taxable income is decreased $45.00 in 1970 and $62.00 in 1971.

COMPUTATION OF MEDICAL EXPENSE ADJUSTMENT - 19 -

STATEMENT / SCHEDULE 5

NAME	TAX YEAR ENDED		
Frances D. Grant	1971		
1. INSURANCE PREMIUMS FOR MEDICAL CARE (Deduct the one more than $150.00)	$ 33.00		
2. COST OF MEDICINES AS SHOWN ON RETURN OR AS PREVIOUSLY DETERMINED	$ -		
3. ADJUSTMENT (See explanation below)	-		
4. COST OF MEDICINES AS NOW DETERMINED	-		
5. LESS: 1% OF ADJUSTED GROSS INCOME AS SHOWN ON RETURN OR AS REVISED	1,501.00		
6. BALANCE	-0-		
7. OTHER MEDICAL EXPENSES AS SHOWN ON RETURN OR AS PREVIOUSLY DETERMINED	12,730.00		
8. ADJUSTMENT (See explanation below)	-		
9. OTHER MEDICAL EXPENSES AS NOW DETERMINED (exclude balance of premiums and medicines on line 5)	12,730.00		
10. TOTAL (line 4 plus line 9)	12,730.00		
11. LESS: 3% OF ADJUSTED GROSS INCOME AS SHOWN ON RETURN OR AS REVISED	4,503.00		
12. BALANCE	8,227.00		
13. MEDICAL DEDUCTION ALLOWABLE (line 1 plus line 12)	8,260.00		
14. MEDICAL DEDUCTION AS SHOWN ON RETURN OR AS PREVIOUSLY ALLOWED	16,705.00		
15. ADJUSTMENT (INCREASE) (DECREASE)	2,445.00		

ADJUSTED GROSS INCOME AS REVISED

16. ADJUSTED GROSS INCOME AS SHOWN ON RETURN OR AS PREVIOUSLY DETERMINED	68,584.00		
17. ADD ITEMS A SCHEDULE 1	81,514.00		
18. DEDUCT ITEMS SCHEDULE	-		
19. ADJUSTED GROSS INCOME AS REVISED	150,098.00		

EXPLANATION OF ADJUSTMENTS

(Caption Omitted)

ANSWER (Docket No. 5757-77)

(Filed July 21, 1977)

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1., 2. and 3. Admits the allegations of paragraphs 1, 2 and 3 of the petition.

4. (a) to (f), inclusive. Denies the allegations of subparagraphs (a) to (f), inclusive, of paragraph 4 of the petition.

5. (a) Admits the petitioner is over ninety years old; denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition.

(b) Admits that in August of 1970, petitioner made a gift of 50,000 Class "A" Voting Trust Certificates, representing common stock of BMA Corporation, to her son William D. Grant; that this was a gift conditioned upon the donee paying the gift tax shown to be due by petitioner's gift tax return; that on or before April 15, 1971, petitioner filed her gift tax return for 1970, reporting the aforesaid gift, and the donee paid, upon the filing of said return, the gift taxes disclosed to be owing for said gift in the amount of $106,334.32; and that the petitioner's adjusted basis in these Voting Trust Certificates was $4,857.00; denies the remaining allegations of subparagraph (b) of paragraph 5 of the petition.

(c) Admits the allegations of subparagraph (c) of paragraph 5 of the petition.

(d) Admits that on January 11, 1971, petitioner made a gift of 40,000 Class "A" Voting Trust Certificates, representing common stock of BMA Corporation, to her son William D. Grant; that this was a gift conditioned upon the donee paying the gift tax shown to be due by petitioner's gift tax return; that on May 20, 1971, petitioner filed her gift tax return for the first quarter of 1971 reporting the aforesaid gift and the donee paid, upon the filing of said return the gift taxes disclosed to be owing for said gift in the amount of $126,295.77; and that the petitioner's adjusted basis in these Voting Trust Certificates was $3,885.60; denies the remaining allegations of subparagraph (d) of paragraph 5 of the petition.

(e) Admits the allegations of subparagraph (e) of paragraph 5 of the petition.

(f) Admits the allegations of subparagraph (f) of paragraph 5 of the petition, except it is denied that the Commissioner proposed interest on said deficiencies through March 15, 1977, in the respective amounts of $16,065.00 and $16,243.88.

(g) Denies the allegations of subparagraph (g) of paragraph 5 of the petition.

(h) Admits the allegations of subparagraph (h) of paragraph 5 of the petition.

6. FURTHER ANSWERING the petition, and as a defense to the assignment of error that the statute of limitations bars the assessment of the deficiency in income tax determined by the respondent for the taxable year 1970, the respondent alleges that the income tax due from the petitioner for the taxable year 1970 may be timely assessed under the provisions of *Int. Rev. Code of 1954*, § 6501(e)(1)(A) [hereinafter cited as *Code*], in support of which the respondent alleges:

(a) The amount of gross income stated in the income tax return for the taxable year 1970 was $104,016.00, consisting of the following:

Dividend Income	$102,090.00
Interest Income	722.00
Pension Income	15.00
Trust Income	1,189.00
Gross Income Stated in Return	$104,016.00

(b) In addition thereto, the petitioner realized a long-term capital gain in the amount of $71,948.27, which was not included in the gross income stated in the return filed by the petitioner for said year, and there was not disclosed on the return or in a statement attached thereto the fact that this amount was received during said year.

(c) The $71,948.27 was properly includable in gross income for the taxable year 1970 as earned income.

(d) The $71,948.27 of gross income omitted from the income tax return for the taxable year 1970 is in excess of the twenty-five percent of the gross income stated in said return.

(e) The statutory notice determining the deficiency in income tax against the petitioner for the taxable year 1970 was sent to the petitioner by certified mail on March 10, 1977, which date was prior to the expiration of the six-year period of limitations applicable under *Code* § 6501(e)(1)(A).

7. FURTHER ANSWERING the petition, and in the alternative to the determination that the petitioner realized a long-term capital gain from the disposition of BMA stock in the amount that the gift tax liability assumed by

the donee exceeded the petitioner's adjusted basis in the donated property, the respondent alleges:

(a) In April, 1971, petitioner's son William D. Grant paid gift taxes in the amount of $106,334.32 on the transfer of 50,000 Voting Trust Certificates of BMA Corporation transferred from the petitioner to William D. Grant in August, 1970.

(b) The petitioner's adjusted basis in the 50,000 Voting Trust Certificates of BMA Corporation was $4,857.00, resulting in a net gain to the petitioner upon the payment of the gift tax liability by William D. Grant of $101,477.32.

(c) In May, 1971, petitioner's son William D. Grant paid gift taxes in the amount of $126,295.78 on the transfer of 40,000 Voting Trust Certificates of BMA Corporation transferred from the petitioner to William D. Grant in January of 1971.

(d) The petitioner's adjusted basis in the 40,000 Voting Trust Certificates of BMA Corporation transferred in January, 1971, was $3,885.60, resulting in a net gain to to the petitioner upon the payment of the gift tax liability by William D. Grant of $122,410.18.

(e) Petitioner's net long-term capital gain resulting from the payment of the gift tax liability in 1971, relative to the transfer of 90,000 BMA Voting Trust Certificates referred to in the above subparagraphs (a) to (d), inclusive, is $223,887.50.

(f) The net long-term capital gain of $223,887.50 referred to above in subparagraph (e) is taxable income subject to the fifty percent deduction provided by *Code* § 1202. The net gain, as corrected, is $111,943.75.

(g) Due to the increase of petitioner's adjusted gross income for taxable year 1971 in the amount of $111,943.75, a medical expense deduction of $7,347.00 is allowed in lieu of $10,705.00 claimed on petitioner's tax return. Accordingly, the petitioner's taxable income is increased in the amount of $3,358.00 for taxable year 1971.

(h) Due to the increase in petitioner's adjusted gross income in 1971 in the amount of $111,943.75, a sales tax deduction of $311.00 is allowed in taxable year 1971 in lieu of the sales tax deduction of $266.00 claimed in the petitioner's return for taxable year 1971. Therefore, petitioner's taxable income is decreased $62.00 in taxable year 1971.

(i) Due to the adjustments set forth in the above subparagraphs (e) to (h), inclusive, the petitioner is subject to a statutory deficiency for taxable year 1971 in the amount of $70,427.00.

WHEREFORE, it is prayed:

(1) That the relief sought by the petitioner be denied;

(2) That the deficiencies in income taxes for the taxable years 1970 and 1971, as set forth in the statutory notice, be in all respects approved;

(3) That the Court determine that the assessment and collection of the deficiency in income tax for the taxable year 1970, as set forth in the statutory notice of deficiency, is not barred by the statute of limitations; and

(4) That, in the alternative, the Court redetermine the deficiency in income tax for the taxable year 1971 to be in the amount determined by the respondent, namely, $50,237.00, plus an increased deficiency in income tax for the taxable year 1971 in the amount of $20,190.00, claim

for which is hereby made pursuant to the provisions of *Code* § 6214(a).

Stuart E. Seigel
Chief Counsel
Internal Revenue Service
By: (Signed) James T. Finlen, Jr.
Assistant Regional Counsel

Date: July 19, 1977

Of Counsel:

Frank C. Conley
Regional Counsel
Gary C. Gough
Attorney
Internal Revenue Service
2700 Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106
Tel. No. (816) 374-3556

(Caption Omitted)

MEMORANDUM OPINION (Docket No. 5757-77)

(Filed February 27, 1980)

[The Memorandum Opinion of the Tax Court in this case is reproduced at pages A12 through A16 of the Appendix to the Petition for a Writ of Certiorari in this case.]

(Caption Omitted)

ORDER AND DECISION (Docket No. 5757-77)

(Filed February 28, 1980)

Pursuant to the determination of the Court, as set forth in its Memorandum Opinion, filed February 27, 1980, it is

ORDERED: That petitioner's motion for judgment on the pleadings, filed September 22, 1977, is granted, and it is

ORDERED AND DECIDED: That there are no Federal income tax deficiencies due from the petitioner for the taxable years 1970 and 1971.

/s/ Howard A. Dawson, Jr.
Judge

Entered: February 28, 1980

(Caption Omitted)

NOTICE OF APPEAL (Docket No. 5757-77)

(Filed May 27, 1980)

Notice is hereby given that the Commissioner of Internal Revenue appeals to the United States Court of Appeals for the Eighth Circuit from the decision of this Court entered in the above-captioned proceeding of the 28th day of February, 1980.

Petitioner resided in Kansas City, Missouri at the time she filed her petition with the Tax Court. Accordingly, venue is properly placed with the United States Court of Appeals for the Eighth Circuit.

(Signed) M. Carr Ferguson/J. H. Jr.
Assistant Attorney General
Department of Justice
(Signed) N. Jerold Cohen/J. H. Jr.
Chief Counsel
Internal Revenue Service

Dated: May 27, 1980

GENERAL DOCKET

UNITED STATES TAX COURT

Docket No. 1800-77

VICTOR P. DIEDRICH AND FRANCES T. DIEDRICH,
530 Academy St., Owatonna, MN 55060,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Feb. 28, 1977	PETITION FILED: FEE PAID Feb. 28, 1977.
Feb. 28, 1977	REQUEST by Petr. for trial at St. Paul, MN filed.
March 24, 1977	ENTRY OF APPEARANCE by Nicky R. Hay as counsel for petr. filed.
April 11, 1977	ANSWER by Resp. filed.
Feb. 14, 1978	NOTICE OF TRIAL on May 22, 1978 at St. Paul, MN.
May 22, 1978	HEARING at St. Paul, MN before Judge Wiles. Stipulation of Facts with Exhibits. ORIGINAL BRIEFS DUE: July 21, 1978. REPLY BRIEFS DUE: Sept. 19, 1978. SUBMITTED TO JUDGE WILES.
Jun. 13, 1978	TRANSCRIPT of May 22, 1978 received.
Jul. 21, 1978	ENTRY OF APPEARANCE by Bruce J. Shnider for Petr.
Jul. 21, 1978	BRIEF for Resp. filed.

Jul. 25, 1978	BRIEF for Petr. filed. (PM Timely)
Sep. 19, 1978	REPLY BRIEF filed by Resp.
Sep. 25, 1978	REPLY BRIEF for Petrs. filed. (PM Timely)
Nov. 6, 1979	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Wiles. Decision will be entered for Petr.
Nov. 13, 1979	DECISION ENTERED, Judge Wiles.
Dec. 12, 1979	MOTION by Resp. to Vacate Decision in order to permit entry of decision under Rule 155.
Dec. 12, 1979	MOTION by Resp. for leave to file Motion to Revise Opinion and permit entry of Decision under Rule 155 out of time. (Motion to Revise Opinion and permit entry of Decision under Rule 155 Lodged)
Dec. 17, 1979	MOTION by Resp. to Revise Opinion and Permit Entry of Decision under Rule 155.
Dec. 17, 1979	ORDER that Resp's motions filed Dec. 12, 1979 and Dec. 17, 1979 are granted, and the decision entered on Nov. 13, 1979 is vacated and set aside. Further ORDERED that Court's Memorandum Findings of Fact and Opinion filed Nov. 6, 1979 is amended re: "Decision will be entered for the Petr." is changed to "Decision will be entered under Rule 155."
Feb. 11, 1980	AGREED COMPUTATION filed.
Feb. 13, 1980	DECISION ENTERED, Judge Wiles.

APPELLATE PROCEEDINGS

May 12, 1980	NOTICE OF APPEAL to U.S.C.A., Eighth Circuit, filed by Respondent.
May 13, 1980	NOTICE of Filing with copy of notice of appeal mailed to Mr. Phillip H. Martin, counsel for petitioners.
May 13, 1980	NOTICE, to parties, of assembling and date for transmission of the record.

(Caption Omitted)

PETITION (Docket No. 1800-77)

(Filed February 28, 1977)

The petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, bearing symbols AP:STP:RJW:BJC:cab, dated November 30, 1976, and as the basis for their case allege as follows:

1. The petitioners are individuals, husband and wife, with legal residence now at 530 Academy Street, Owatonna, Minnesota 55060. The return for the period here involved was filed with the Office of the Internal Revenue Service at Ogden, Utah.

2. The notice of deficiency (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A) was mailed to the petitioners on November 30, 1976, and was issued by the Office of the Internal Revenue Service at St. Paul, Minnesota.

3. The deficiency as determined by the Commissioner is in income tax for the calendar year 1972, in the amount of $27,831, of which $27,231 is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

A. The Commissioner erred in determining that the petitioners realized long-term capital gain in the amount of $47,320, or any other types or amount of income, in 1972 as the result of their gift of 51,073 shares of stock of Owatonna Manufacturing Company, Inc. (with a basis to petitioners of $1 per share) to their son and to trusts for their daughters subject to the condition that the donees pay the federal and state gift taxes, aggregating $145,713, on those transfers.

B. The Commissioner erred in determining that the aforesaid transfers of 51,073 shares of stock of Owatonna Manufacturing Company, Inc. to petitioners' son and trusts for their daughters were in part sales.

C. If the Commissioner did not err in determining that the aforesaid transfers were in part sales, the Commissioner erred in determining that $64,213 in federal and state gift tax deficiencies paid in 1975 by petitioners' son and the trusts for their daughters relating to the aforesaid 1972 transfers was includable in the alleged purchase price for, or was otherwise income relating to, the transfer of the aforesaid 51,073 shares of stock.

D. If the Commissioner did not err in determining that the aforesaid transfers were in part sales, the Commissioner erred in determining that the amount realized on the aforesaid alleged partial sale by the petitioners as cash basis taxpayers exceeded $62,992 in 1972.

5. The facts upon which the petitioners rely, as the basis for their case, are as follows:

A. The petitioners are and were during the taxable year 1972 husband and wife, and they timely filed a joint

individual income tax return for 1972 on the cash basis of accounting.

B. On or about April 1, 1972, petitioners made gifts of 51,073 shares of the stock of Owatonna Manufacturing Company, Inc. to or for the benefit of their three adult children. Petitioners' son, Eugene F. Diedrich, was given 17,025 shares outright, and 17,024 shares were given in separate trusts for the benefit of each of petitioners' daughters, JoAnne D. Petkus and Madelyn D. Smith, pursuant to irrevocable trusts created on April 1, 1972 by petitioner Victor P. Diedrich. These gifts were made subject to the condition that each donee pay the federal and state gift taxes attributable to the transfers as evidenced by an agreement in the following form signed by the son and the trustee of the trusts:

> I have been informed that this gift is being made subject to my paying the gift tax (federal and state) on same. This letter can be taken as my acceptance of the proposed condition of the gift, and I agree to accept as my share of the gift taxes an amount which is commuted by your tax counsel, Haskins & Sells.

C. On or before August 15, 1972, petitioners timely filed federal gift tax returns for the quarter ended June 1972, and on said returns petitioners consented to treat these so-called "net gifts" as if made one-half by each spouse pursuant to section 2513 of the Code. The shares of said stock were valued in said gift tax returns at $7.80 per share for an aggregate value of $398,369, resulting in federal gift taxes of $62,992, all of which was paid during 1972 by the donees. On or before April 15, 1973, petitioners timely filed Minnesota gift tax returns for 1972 and reported these gifts therein, resulting in Minnesota gift taxes of $18,508, all of which was paid during 1973 by the donees.

D. Upon audit of petitioners' gift tax returns in 1975, the value of the stock was increased to $13 per share, for an aggregate value of $663,949, resulting in additional combined federal and state gift taxes of $64,213, all of which was paid in 1975 by the donees.

E. Petitioners did not report any income on their joint income tax return for 1972 on account of these gifts, or the donees' agreement to pay the gift taxes arising out of the transfers, or the actual payment by the donees of a portion of said gift taxes in 1972.

F. Upon audit of petitioners' 1972 income tax return, the Commissioner determined that petitioners realized a long-term capital gain on the ground that said gifts were partially a sale of the aforementioned stock to petitioners' son and trusts for their daughters in the amount by which the total federal and state gift taxes of $145,713 paid in 1972, 1973 and 1975 exceeded petitioners' basis of $51,073 in the shares transferred.

G. Petitioners realized no income on account of these net gifts; petitioners' detached generosity was the antithesis of an income producing transaction so that there was no sale involved in the 1972 transfers.

H. In any event, the amount received by petitioners in 1972 cannot exceed the $62,992 in gift taxes actually paid by the donees in cash in that year because the donees' unsecured promises to pay the gift taxes are not the equivalent of cash and because the obligations to pay more than said $62,992 did not arise until after 1972 in 1973 and 1975.

I. Any gift taxes paid for petitioners are gifts from their children, excludable from petitioners' income pursuant to section 102 of the Code.

J. The gift taxes paid for petitioners in 1975 as set forth in paragraph 5 D above were voluntarily paid by the donees and not pursuant to the agreement quoted in paragraph 5 B above.

WHEREFORE, the petitioners pray that the Court may hear the proceeding and:

1. Determine that the Commissioner erred as alleged in the assignment of error set forth in paragraph 4 hereinabove:

2. Find that there is no deficiency in income tax for the calendar year 1972 other than the $600 not here in dispute; and

3. Give such other and further relief as in the premises the Court may deem fit and proper.

/s/ Phillip H. Martin
612/340-2845

/s/ Nicky R. Hay
612/340-2932
2300 First National Bank Building
Minneapolis, Minnesota 55402

Of Counsel: Dorsey, Windhorst, Hannaford, Whitney & Halladay

Dated: Feb. 24, 1977

Exhibit A

[illegible] Revenue Service
[illegible] gional Commissioner

- 8 -

Date: NOV 30 1976

Tax Year Ended and Deficiency:
12/31/72 $27,631.00

Mr. Victor P. Diedrich and
Mrs. Frances T. Diedrich
530 Academy Street
Owatonna, Minnesota 55060

Person to Contact:
Robert J. Walsh
Contact Telephone Number:
(612) 725-5867

Dear Mr. and Mrs. Diedrich:

This letter is a NOTICE OF DEFICIENCY—as required by law—that we have determined the income tax deficiencies shown above. We regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You can obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C., address stated above.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Donald C. Alexander
Commissioner
By

James R. Wells
Chief, Appellate Office

Enclosures:
Statement
Waiver
Envelope

316 N. Robert St. St. Paul, Minn. 55101

Form L-21 AD (Rev. 11-74)

Form 4089
(Rev. November 1974)

Statutory Notice of Assessment - Waiver

AP:STP
RJH:GJC:cab

(Name and Address of Taxpayer(s))

- 9 -

Victor P. Diedrich and Frances T. Diedrich
530 Academy Street
Owatonna, Minnesota 55060

Kind of Tax	☑ Copy to Authorized Representative Frederick W. Bassinger, Haskins & Sells 1950 IDS Tower, Minneapolis, Minnesota 55402
Income	
Taxable Year Ended	Deficiency (Increase in Tax and Penalties)
December 31, 1972	$27,831.00

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Signature			
	▶		Date
	▶		Date
	By ▶	Title	Date

Note:

If you consent to the assessment of the amounts shown in this waiver, please sign and return the form in order to limit the accrual of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are so entitled; nor prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Court of Claims, but you may not file a petition with the United States Tax Court.

Who Must Sign

If you filed jointly, both you and your spouse must sign. If the taxpayer is a corporation this waiver must be signed with the corporate name followed by the signatures and titles of the officers authorized to sign.

Your attorney or agent may sign this waiver provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, an executor, administrator, or a trustee), Form 56, Notice of Fiduciary Relationship, should, unless previously filed, accompany this form.

If you agree, please sign one copy and return it; keep the other copy for your records.

Form | INDIVIDUAL INCOME [illegible] | 1.

Victor P. & Frances T. Diedrich	Taxable Years Ended - 10 -	12-31-72	
Taxable Income or Adjusted Gross Income as Shown in: ☒ Return as Filed ☐ Preliminary Letter Dated ☐ Statutory Notice Dated			
Increases (or Decreases) in Income (See attached explanation of items)		49,184.00	
a. Dividend income		3,700.00	
b. Other deductions		(2,500.00)	
c. Capital gains		47,320.00	
Taxable Income as Revised, ~~BASIS AMOUNT~~		97,704.00	
Tax Computation: Tax			
ALTERNATIVE TAX FROM SCHEDULE 3		44,483.00	
Less: Tax Credits			
Contributions to candidates per return		13.00	
Subtotal		44,470.00	
Add: Self-Employment Tax			
Tax from Recomputing Prior Year Investment Credit			
Tax Liability		44,470.00	
Liability Previously Assessed			
Per Return		16,639.00	
Increase (or Decrease) in Tax		27,831.00	

Form 3611 (Rev. 3-70) Dispose of all prior issues. Department of the Treasury - Internal Revenue Service

	EXPLANATION OF ITEMS	
TAXPAYER		YEAR PERIOD ENDED
Victor P. & Frances T. Diedrich	- 11 -	12-31-72

a. It is determined that accounting fees in the amount of $3,700.00 paid on your behalf by the Owatonna Manufacturing Company, Inc. is dividend income which you did not report on your return. Accordingly, taxable income is increased by $3,700.00.

b. It is determined that $2,500.00 of the above fees is for tax preparation and tax planning expense which is allowable as an itemized deduction. Accordingly, taxable income is decreased by $2,500.00.

c. It is determined that as a result of your gift in 1972 of 51,073 shares of stock of Owatonna Manufacturing Company, Inc., to your son and trusts for your daughters with a fair market value of $663,949, subject to the condition that the donees would pay the Federal and State gift tax, you have realized taxable income as shown below:

Federal gift tax	$112,200.00
Minnesota gift tax	33,513.00
Total gift tax paid	$145,713.00
Less adjusted basis of stock (51,073 shares @ $1.00)	51,073.00
Realized gain	$ 94,640.00
Recognized gain--50%	$ 47,320.00

Accordingly, taxable income is increased by $47,320.00.

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

Form 4549-C (Rev. 10-72)

INCOME TAX AUDIT CHANGES
COMPUTATION OF ALTERNATIVE TAX – INDIVIDUALS AND FIDUCIARIES

NAME OF TAXPAYERS	SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER
Victor P. & Frances T. Diedrich - 12 -	473-03-2601

		Year:	Year: 1972	Year:
PART I Complete for all years	1. CORRECTED TAXABLE INCOME (from line 6, page Schedule 1)		97,704	
	2. LESS: 50% OF EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS		67,355	
	3. BALANCE		30,349	
	4. EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS (line 2 multiplied by 2)		134,710	
	5. TAX ON AMOUNT ON LINE 3		8,016	
	6. a. FOR 1969 AND PRIOR YEARS – 25% OF LINE 4 b. FOR 1970 AND SUBSEQUENT YEARS, IF LINE 4 NOT OVER $50,000* – 25% OF LINE 4 c. FOR 1970 AND SUBSEQUENT YEARS, IF LINE 4 EXCEEDS $50,000* – AMOUNT FROM LINE 18 FOR 1970 AND 1971 AND AMOUNT FROM LINE 14 FOR LATER YEARS		36,467	
	7. ALTERNATIVE TAX (add lines 5 and 6)		44,483	
PART II Complete only for 1970 and subsequent years when line 4 above exceeds $50,000* (for 1970 and 1971, also complete part III)	8. AMOUNT FROM LINE 4 ABOVE		134,710	
	9. LONG-TERM CAPITAL GAINS (section 1201(d)(3)(C))**		50,000	
	10. 25% OF THE LESSER OF LINE 8 OR LINE 9		12,500	
	11. TAX ON LARGER OF LINE 1 OR LINE 7		43,802	
	12. TAX AT ORDINARY RATE ON SUM OF LINE 3 PLUS ½ OF LINE 9		19,835	
	13. LINE 11 LESS LINE 12 (if less than zero, enter zero)		23,967	
	14. ADD LINES 10 AND 13 (see line 18 below)		36,467	
PART III Complete for years 1970 and 1971 if line 4 above exceeds $50,000*	15. a. FOR 1970 – 25⅔% OF LINE 8 LESS LINE 9 b. FOR 1971 – 33⅓% OF LINE 8 LESS LINE 9 (if less than zero, enter zero)			
	16. AMOUNT FROM LINE 10 ABOVE			
	17. ADD LINES 15 AND 16			
	18. LESSER OF AMOUNTS ON LINES 14 OR 17 (enter on line 6(c) above)			

* $25,000 if married filing separately.

** Long-term capital gains from (1) certain binding contracts, distributions and redemptions rules, and (2) other sources limited to the excess of $50,000 ($25,000 married filing separately) over the gains from the binding contracts, etc.

(Caption Omitted)

STIPULATION OF FACTS (Docket No. 1800-77)

(Filed May 22, 1978)

It is hereby stipulated and agreed that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. The petitioners, Victor P. and Frances T. Diedrich, are husband and wife, with legal residence at 530 Academy Street, Owatonna, Minnesota 55060, which was also their legal residence at the time their petition herein was filed.

2. Petitioners timely filed a joint federal individual income tax return for the year 1972, a copy of which is attached hereto as Exhibit 1-A, with the Office of the Internal Revenue Service at Ogden, Utah.

3. Petitioners determined their income and expenses for 1972 on the cash receipts and disbursements method of accounting.

4. On April 1, 1972, Victor P. Diedrich made a gift of 51,013 shares of voting and nonvoting common stock of Owatonna Manufacturing Company, Inc. (OMC) to or for the benefit of his three adult children, Eugene F. Diedrich, JoAnne D. Petkus, and Madelyn D. Smith. Also, on April 1, 1972, Frances T. Diedrich made a gift of 60 shares of common stock of OMC to her son, Eugene F. Diedrich. A total of 17,025 shares, 12,903 shares of voting common stock and 4,122 shares of nonvoting common stock, was given outright to Eugene F. Diedrich. A total of 17,024 shares of

nonvoting common stock was given to an irrevocable trust created by Victor P. Diedrich for the benefit of his daughter, JoAnne D. Petkus, Trust Under Agreement dated April 1, 1972 (hereafter the "Petkus Trust.") A total of 17,024 shares of nonvoting common stock was given to an irrevocable trust by Victor P. Diedrich for the benefit of his daughter, Madelyn D. Smith, Trust Under Agreement dated April 1, 1972 (hereafter the "Smith Trust.") Eugene F. Diedrich was and is the sole trustee for the Petkus Trust and the Smith Trust. Eugene F. Diedrich and the Petkus Trust and the Smith Trust are hereinafter referred to as the "Donees."

5. At the time of the making of the gifts referred to in paragraph 4, above, Eugene F. Diedrich for himself and as the trustee of the Petkus Trust and Smith Trust signed three agreements on behalf of each of the Donees in the form attached hereto as Exhibit 2-B.

6. On or before August 15, 1972, petitioners timely filed federal gift tax returns for the quarter ended June 1972, copies of which are attached as Exhibits 3-C and 4-D.

7. On or before April 15, 1973, petitioners timely filed a Minnesota gift tax return for the year 1972 and reported the gifts referred to in paragraph 4 above. Minnesota gift taxes of $18,508 based on a gift of $316,869, were paid during 1973 by the Donees.

8. Upon audit of petitioners' federal gift tax returns in 1974, the value of the OMC stock given to the Donees as described in paragraph 4. above was increased from $7.80 to $13.00 per share. Thus, the value of the 51,073 shares was $663,949. To compute the gift tax liability after audit, the amount of $663,949 was reduced by the federal and state gift taxes paid or to be paid by the Donees in the amount of $145,713, and the amount of the gift was determined to

be $518,236. The additional federal and Minnesota gift taxes resulting from the audit of $64,213 were paid during 1975 by Donees.

9. On or about August 15, 1972, Eugene F. Diedrich acting in his individual capacity and as the trustee of the Petkus Trust and the Smith Trust, borrowed the sum of $62,992 from OMC. Each loan was represented by three separate checks in the aggregate amount of $62,992, payable to the order of the respective borrower. The federal gift tax liability of $62,992 shown on Exhibits 3-C and 4-D was paid on or about August 15, 1972, by Eugene F. Diedrich, individually and as trustee of the trusts, by endorsing said checks payable to the order of the Internal Revenue Service.

10. In December, 1972, the Petkus Trust and the Smith Trust each sold 2,728 shares of OMC stock to OMC at the price of $7.80 per share. The proceeds from these sales were used by the trusts to repay the loans from OMC, plus interest thereon which had accrued to the date of repayment. Eugene F. Diedrich repaid his loan from OMC, plus interest, with his personal funds.

11. On or before April 15, 1973, the Petkus Trust and the Smith Trust each sold additional shares of OMC stock to OMC at the price of $7.80 per share, and the proceeds of the sales received by the trusts were used by each trust to pay its respective computed share of the Minnesota gift taxes shown due on the petitioners' Minnesota gift tax returns filed on or about April 15, 1973. Eugene F. Diedrich used his personal funds to pay his computed share of the Minnesota gift tax liability in 1973.

12. After the audit of petitioners' gift tax returns as described in paragraph 8. above, OMC agreed to pay to the

Petkus Trust and the Smith Trust additional consideration for the purchase of the OMC stock in December, 1972, from the trusts as described in paragraph 10. herein to bring the purchase price up to $13 per share, plus interest thereon from the date of sale to the date of payment of such additional consideration. Each trust used these proceeds to pay its respective computed shares of the additional federal and Minnesota gift taxes resulting from the audit. Eugene F. Diedrich paid his computed share of the additional gift taxes from his personal funds.

13. Petitioners had a basis of $1.00 per share in the OMC stock given to the Donees as described in paragraph 4. above, and as of the date of the gift, had held this OMC stock longer than six months.

14. One of the reasons petitioners made the gift to their son, Eugene F. Diedrich, who is now President of OMC, was to encourage his continued participation in the business. One of the reasons petitioners made the gift of stock in OMC in trust for the benefit of their daughters was to provide them with an equity interest in the family business. Eugene F. Diedrich, petitioners' son, is the sole trustee of the trusts created for the benefit of the Diedrichs' daughters to ensure that majority control of the outstanding shares of stock of all types in OMC will remain in the control of the Diedrich family.

15. Respondent concedes that the gift taxes paid by the Donees in 1973 and 1975 should not be considered in computing the gain respondent alleges the petitioners realized in 1972 as a result of the gifts referred to in paragraph 4 above. Thus, respondent now contends the gain should be computed as follows:

Amount realized (gift tax liability paid by Donees)	$62,992.00
Less: adjusted basis in stock transferred (see paragraph 13 above)	51,073.00
Long-term capital gain	$ 1,919.00
Less: Section 1202 deduction	959.50
Gain recognized	$ 959.50

16. Petitioners concede the correctness of respondent's adjustments in the statutory notice increasing taxable income $3,700.00 for dividend income and decreasing taxable income $2,500.00 for other deductions in 1972.

/s/ Philip H. Martin
Counsel for Petitioners
2300 First National Bank Bldg.
Minneapolis, Minnesota 55402

Stuart E. Seigel
Chief Counsel
Internal Revenue Service
By: (Signed) Donald W. Wolf
Assistant Regional Counsel
572 Federal Building and U.S. Courthouse
316 North Robert Street
St. Paul, Minnesota 55101
Tel. No. 612-725-7474

May 18, 1978

(Caption Omitted)

MEMORANDUM FINDINGS OF FACT AND OPINION (Docket No. 1800-77)

(Filed November 6, 1979)

[The Memorandum Findings of Fact and Opinion of the Tax Court in this case is reproduced at pages A17 through A22 of the Appendix to the Petition for a Writ of Certiorari in this case.]

(Caption Omitted)

DECISION (Docket No. 1800-77)

(Filed November 13, 1979)

Pursuant to the opinion of the Court filed November 6, 1979, and amended by Court Order dated December 17, 1979, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1972 in the amount of $600.00.

Judge.

Entered:

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision without prejudice to the right of either party to contest the correctness of the decision entered herein.

/s/ Philip H. Martin
Counsel for Petitioners
2300 First National Bank Bldg.
Minneapolis, Minnesota 55402

N. Jerold Cohen
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Date February 7, 1980

(Caption Omitted)

NOTICE OF APPEAL (Docket No. 1800-77)

(Filed May 12, 1980)

Notice is hereby given that the Commissioner of Internal Revenue appeals to the United States Court of Appeals for the Eighth-Circuit from the decision of this Court entered in the above-captioned proceeding of the 13th day of February, 1980.

Petitioners resided in Owatonna, Minnesota at the time they filed their petition with the Tax Court. Accordingly, venue is properly placed with the United States Court of Appeals for the Eighth Circuit.

(Signed) M. Carr Ferguson
Assistant Attorney General
Department of Justice
(Signed) N. Jerold Cohen
Chief Counsel
Internal Revenue Service

Dated: May 5, 1980

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1376

VICTOR P. DIEDRICH and FRANCES T. DIEDRICH,
Appellees,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellant.

Appeal From the United States Tax Court

No. 80-1421

UNITED MISSOURI BANK OF KANSAS CITY, N.A., EXECUTOR OF THE ESTATE OF FRANCES D. GRANT, DECEASED,
Appellee,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellant.

Appeal From the United States Tax Court

OPINION

[The Opinion of the Eighth Circuit in these cases is reproduced at pages A1 through All of the Appendix to the Petition for a Writ of Certiorari in this case.]

(Caption Omitted)

JUDGMENT (No. 80-1376)

[The Judgment of the Eighth Circuit in this case is reproduced at page A23 of the Appendix to the Petition for a Writ of Certiorari in this case.]

(Caption Omitted)

JUDGMENT (No. 80-1421)

[The Judgment of the Eighth Circuit in this case is reproduced at page A24 of the Appendix to the Petition for a Writ of Certiorari in this case.]

(Caption Omitted)

ORDER DENYING REHEARING EN BANC

(No. 80-1421)

[The Order Denying Rehearing *En Banc* in this case is reproduced at page A25 of the Appendix to the Petition for a Writ of Certiorari in this case.]

ORDER DENYING REHEARING EN BANC

(No. 80-1376)

(Caption Omitted)

[The Order Denying Rehearing En Banc in this case is reproduced at page A26 of the Appendix to the Petition for a Writ of Certiorari in this case.]